

ESTATE OF SIDNEY LOMAX, DECEASED

JUNE 26, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. MACHROWICZ, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 536]

The Committee on the Judiciary, to whom was referred the bill (S. 536) for the relief of the estate of Sidney Lomax, deceased, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in Senate Report No. 238, Eighty-second Congress, which is appended hereto and made a part of this report.

Your committee concurs in the recommendation of the Senate.

[S. Rept. No. 238, 82d Cong., 1st sess.]

PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of \$5,000 to the estate of Sidney Lomax, deceased, in full satisfaction of all claims against the United States for compensation for the death of the said Sidney Lomax, who died as a result of injuries received when he was struck by a United States Army truck in Starkville, Miss., on November 27, 1943.

STATEMENT

On November 27, 1943, at about 8:30 a. m., an Army truck with trailer attached was proceeding in a westerly direction in Starkville, Miss. The Army truck was part of an official convoy of Army vehicles and was operated by an enlisted man, but the truck was about one city block behind the next preceding vehicle in the convoy. Near the intersection of Lee Street with Montgomery Street, the driver of the Army truck observed Sidney Lomax walking in a northerly direction on the west cross walk across Lee Street. When the driver of the Army truck saw Mr. Lomax crossing the street he had ample time to avoid striking the pedestrian, but the only action he took was to swerve to the right and honk the horn of the truck. Even this action was taken so late that the driver was unable to avoid striking the pedestrian.

Mr. LOMAX. was struck by the left end of the front bumper of the Army truck, and as a result of the accident he was killed instantly.

At the time of his death Sidney Lomax was 78 years of age and was engaged in the work of cleaning yards and gardens for people in Starkville, Miss. From his occupation he earned approximately \$50 per month. His wife and one crippled adult child were dependent upon Mr. Lomax for their support.

The Department of the Army concludes that the accident and the resulting death of Sidney Lomax were the result of the negligence of the driver of the Army truck, and the Department therefore takes the position that compensation in a reasonable amount should be paid to the estate of Sidney Lomax on account of his death. However, the Department feels that the amount stated in this bill as compensation is somewhat excessive. The Department recommends that the amount be reduced to \$5,000.

In view of the fact that this accident and the resultant death of Sidney Lomax were caused by the negligence of a governmental employee acting within the scope of his authority, it is the opinion of the committee that compensation should be paid to the estate of Sidney Lomax on account of his death. However, taking into account the age of the deceased at the time of his death, his earning capacity, the age of his widow, and the limited number of persons dependent upon him for support, the committee is inclined to agree with the Department of the Army that the award proposed in this bill is somewhat excessive, and it agrees with the Department that the award should be reduced to \$5,000. With this amendment, the committee recommends favorable consideration of the bill by the Senate.

Attached to this report and made a part thereof is the report on the instant bill submitted by the Department of the Army.

DEPARTMENT OF THE ARMY,
Washington, D. C., February 16, 1951.

The honorable the ATTORNEY GENERAL,
Washington, D. C.

DEAR MR. ATTORNEY GENERAL: Reference is made to your letter with which you enclosed a copy of S. 536, Eighty-second Congress, a bill for the relief of the estate of Sidney Lomax, deceased. You state that the Senate Committee on the Judiciary has requested the Department of Justice to submit a report on this bill and has advised that if reports are necessary from other sources they will be secured by your Department and submitted along with your report to the committee. You, therefore, request the comments of the Department of the Army on S. 536.

This bill would authorize and direct the Secretary of the Treasury "to pay, out of any money in the Treasury not otherwise appropriated, to the estate of Sidney Lomax, deceased, the sum of \$10,000 in full satisfaction of all claims against the United States for compensation for the death of the said Sidney Lomax, who died as a result of injuries received when he was struck by a United States Army truck in Starkville, Miss., on November 27, 1943."

The records of the Department of the Army show that on November 27, 1943, at about 8:30 a. m., a 2½-ton Army truck with trailer attached, operated by an enlisted man in an official convoy of Army vehicles, was proceeding in a westerly direction on Lee Street in Starkville, Miss. The truck in question was traveling a distance of approximately one city block behind the preceding vehicle in the convoy. As said truck neared the intersection of Lee Street with Montgomery Street the driver thereof observed Sidney Lomax walking in a northerly direction on the west crosswalk across Lee Street. The Army driver states that he thereupon sounded his horn and swerved his truck to the right in an attempt to pass said pedestrian, but that when the horn was sounded Mr. Lomax seemed to become confused and turned around and ran into the truck. It appears that Mr. Lomax was struck by the left end of the front bumper of the Army truck and that his head struck the guard of the left headlight. As a result of the accident he was killed instantly.

Several disinterested witnesses to this accident submitted affidavits from which it appears that the Army vehicle involved in said accident was traveling about one city block behind the vehicle immediately preceding it; that at the time it struck Sidney Lomax it was traveling at a speed of about 35 miles per hour; that it did not swerve or reduce its speed before striking Mr. Lomax; and that Mr. Lomax had almost crossed Lee Street when he was struck.

It is clear from the evidence that the Army driver saw Sidney Lomax crossing the street on the crosswalk on the opposite side of the intersection of Lee and Montgomery Streets as he neared said intersection, and that said driver had ample time within which to reduce his speed so as to avoid striking the pedestrian, but that he made no attempt to do so until he was so close upon the pedestrian as to be unable to avoid striking him.

The evidence shows that Sidney Lomax was 78 years of age at the time of his death; that he was engaged in the work of cleaning yards and gardens for people in Starkville, Miss., and earned therefrom approximately \$50 per month. He left surviving, a widow, Lizzie Lomax, 65 years of age, and four adult sons, namely: Joseph Lomax, age 52 years; Philip Lomax, age 48 years; Sidney Lomax, Jr., age 46 years; and Daniel Lomax, age 40 years.

It appears that Philip Lomax is crippled that he and Lizzie Lomax were dependent upon Sidney Lomax for their support.

The expenses incurred in connection with the burial of Sidney Lomax amounted to \$186.20. The decedent carried burial insurance in the amount of \$125 with the Mississippi Mutual Burial Association, which association paid that amount to J. L. Martin, funeral director, Starkville, Miss., the undertaker who buried the decedent, in partial payment of the burial expenses.

It is the view of the Department of the Army that this accident and the resulting death of Sidney Lomax were proximately caused by the negligence of the driver of the Army truck which struck Mr. Lomax in that after observing the pedestrian in the street ahead of him he failed to reduce his speed with sufficient promptness to avoid striking him. The Department, therefore, believes that compensation in a reasonable amount should be paid to the estate of Sidney Lomax on account of his death. Considering the age, occupation, and earnings of the decedent at the time of his death, it is believed that an award in the amount of \$10,000, as proposed by S. 536, would be somewhat excessive. Under the facts in this case it is the view of the Department that an award in the amount of \$5,000 (\$4,938.80 for the death of Mr. Lomax; and \$61.20 for burial expenses not covered by insurance) would constitute a fair and reasonable settlement for all of the damages sustained on account of the death of the decedent.

The Department, accordingly, would have no objection to the enactment of this bill if it should be amended to provide for an award to the estate of Sidney Lomax in the amount of \$5,000.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

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